

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

LARRY WILBURN, JR.,

Plaintiff,

-against-

**CITY OF ALBANY, City of Albany Police Officers
DEVIN ANDERSON and JOHN DOE 1, whose name
Is presently unknown, individually and/or as agents,
Servants, and/or employees of the City of Albany;
COUNTY OF ALBANY; HON. CRAIG D. APPLE,
Albany County Sheriff; JOHN/JANE DOE 2 and 3;
CORRECTIONAL MEDICAL CARE, INC., and
JOHN/JANE DOE 4 and 5,**

Defendants.

**ANSWER TO
COMPLAINT WITH
CROSS-CLAIMS**

Civil No.: 1:13-cv-1452
(GLS/CFH)

Defendants, *City of Albany and Police Officer Devin Anderson*, by and through their attorney, John J. Reilly, Corporation Counsel, Eric P. Sugar, Assistant Corporation Counsel, of counsel, as and for as and for an Answer to the plaintiff's Complaint, set forth as follows:

1. Denies each and every allegation and refers to the Court every question or matter of law contained in paragraph 1 of the plaintiff's Complaint.

2. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation, and refers to the Court every question or matter of law contained in paragraph 2 of the plaintiff's Complaint.

3. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 3 of the plaintiff's Complaint.

4. Admits that the City of Albany is a municipal corporation, and denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every other allegation contained in paragraph 4 of the plaintiff's Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 5 of the plaintiff's Complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 6 of the plaintiff's Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 7 of the plaintiff's Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 8 of the plaintiff's Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 9 of the plaintiff's Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 10 of the plaintiff's Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 11 of the plaintiff's Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 12 of the plaintiff's Complaint.

13. Denies each and every allegation and refers to the Court every question or matter of law contained in paragraph 13 of the plaintiff's Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 14 of the plaintiff's Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 15 of the plaintiff's Complaint.

16. Denies each and every allegation contained in paragraph 16 of the plaintiff's Complaint.

17. Denies each and every allegation contained in paragraph 17 of the plaintiff's Complaint.

18. Denies each and every allegation contained in paragraph 18 of the plaintiff's Complaint.

19. Denies each and every allegation contained in paragraph 19 of the plaintiff's Complaint.

20. Denies each and every allegation contained in paragraph 20 of the plaintiff's Complaint.

21. Denies each and every allegation contained in paragraph 21 of the plaintiff's Complaint.

22. Denies each and every allegation contained in paragraph 22 of the plaintiff's Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth or falsity each and every allegation contained in paragraph 23 of the plaintiff's Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 24 of the plaintiff's Complaint.

25. Denies each and every allegation contained in paragraph 25 of the plaintiff's Complaint.

26. Denies each and every allegation contained in paragraph 26 of the plaintiff's Complaint.

27. Denies each and every allegation contained in paragraph 27 of the plaintiff's Complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 28 of the plaintiff's Complaint.

29. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 29 of the plaintiff's Complaint.

30. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 30 of the plaintiff's Complaint.

31. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 31 of the plaintiff's Complaint.

32. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 32 of the plaintiff's Complaint.

33. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 33 of the plaintiff's Complaint.

34. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 34 of the plaintiff's Complaint.

35. Denies each and every allegation contained in paragraph 35 of the plaintiff's Complaint.

36. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 36 of the plaintiff's Complaint.

37. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 37 of the plaintiff's Complaint.

38. Denies each and every allegation contained in paragraph 38 of the plaintiff's Complaint.

39. Denies each and every allegation contained in paragraph 39 of the plaintiff's Complaint.

40. Denies each and every allegation contained in paragraph 40 of the plaintiff's Complaint.

41. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 41 of the plaintiff's Complaint.

42. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation and refers to the Court every question or matter of law contained in paragraph 42 of the plaintiff's Complaint.

43. Denies each and every allegation contained in paragraph 43 of the plaintiff's Complaint.

44. Denies each and every allegation contained in paragraph 44 of the plaintiff's Complaint.

45. Denies each and every allegation contained in paragraph 45 of the plaintiff's Complaint.

46. Denies each and every allegation contained in paragraph 46 of the plaintiff's Complaint.

47. Denies each and every allegation contained in paragraph 47 of the plaintiff's Complaint.

48. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 48 of the plaintiff's Complaint.

49. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation and refers to the Court every question or matter of law contained in paragraph 49 of the plaintiff's Complaint.

50. Denies each and every allegation contained in paragraph 50 of the plaintiff's Complaint.

51. Denies each and every allegation contained in paragraph 51 of the plaintiff's Complaint.

52. Denies each and every allegation contained in paragraph 52 of the plaintiff's Complaint.

53. Denies each and every allegation contained in paragraph 53 of the plaintiff's Complaint.

54. Denies each and every allegation contained in paragraph 54 of the plaintiff's Complaint.

55. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 55 of the plaintiff's Complaint.

56. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation and refers to the Court every question or matter of law contained in paragraph 56 of the plaintiff's Complaint.

57. Denies each and every allegation contained in paragraph 57 of the plaintiff's Complaint.

58. Denies each and every allegation contained in paragraph 58 of the plaintiff's Complaint.

59. Denies each and every allegation contained in paragraph 59 of the plaintiff's Complaint.

60. Denies each and every allegation contained in paragraph 60 of the plaintiff's Complaint.

61. Denies each and every allegation contained in paragraph 61 of the plaintiff's Complaint.

62. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 62 of the plaintiff's Complaint.

63. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and refers to the Court every question or matter of law contained in paragraph 63 of the plaintiff's Complaint.

64. Denies each and every allegation contained in paragraph 64 of the plaintiff's Complaint.

65. Denies each and every allegation contained in paragraph 65 of the plaintiff's Complaint.

66. Denies each and every allegation contained in paragraph 66 of the plaintiff's Complaint.

67. Denies each and every allegation contained in paragraph 67 of the plaintiff's Complaint.

68. Denies each and every allegation contained in paragraph 68 of the plaintiff's Complaint.

69. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 69 of the plaintiff's Complaint.

70. Denies each and every allegation contained in paragraph 70 of the plaintiff's Complaint.

71. Denies each and every allegation contained in paragraph 71 of the plaintiff's Complaint.

72. Denies each and every allegation contained in paragraph 72 of the plaintiff's Complaint.

73. Denies each and every allegation contained in paragraph 73 of the plaintiff's Complaint.

74. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of

law for the Court for each and every allegation referred to in paragraph 74 of the plaintiff's Complaint.

75. Denies each and every allegation contained in paragraph 75 of the plaintiff's Complaint.

76. Denies each and every allegation contained in paragraph 76 of the plaintiff's Complaint.

77. Denies each and every allegation contained in paragraph 77 of the plaintiff's Complaint.

78. Denies each and every allegation contained in paragraph 78 of the plaintiff's Complaint.

79. Denies each and every allegation contained in paragraph 79 of the plaintiff's Complaint.

80. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 80 of the plaintiff's Complaint.

81. Denies each and every allegation contained in paragraph 81 of the plaintiff's Complaint.

82. Denies knowledge or information sufficient to cause a belief as to the truth or falsity of the allegations contained in paragraph 82 of the plaintiff's Complaint.

83. Denies each and every allegation contained in paragraph 83 of the plaintiff's Complaint.

84. Denies each and every allegation contained in paragraph 84 of the plaintiff's Complaint.

85. Denies each and every allegation contained in paragraph 85 of the plaintiff's Complaint.

86. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 86 of the plaintiff's Complaint.

87. Denies each and every allegation contained in paragraph 87 of the plaintiff's Complaint.

88. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 88 of the plaintiff's Complaint.

89. Denies each and every allegation contained in paragraph 89 of the plaintiff's Complaint.

90. Denies each and every allegation contained in paragraph 90 of the plaintiff's Complaint.

91. Denies each and every allegation contained in paragraph 91 of the plaintiff's Complaint.

92. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 92 of the plaintiff's Complaint.

93. Denies each and every allegation contained in paragraph 93 of the plaintiff's Complaint.

94. Denies each and every allegation contained in paragraph 94 of the plaintiff's Complaint.

95. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 95 of the plaintiff's Complaint.

96. Denies each and every allegation contained in paragraph 96 of the plaintiff's Complaint.

97. Denies each and every allegation contained in paragraph 97 of the plaintiff's Complaint.

98. Denies each and every allegation contained in paragraph 98 of the plaintiff's Complaint.

99. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 99 of the plaintiff's Complaint.

100. Denies each and every allegation contained in paragraph 100 of the plaintiff's Complaint.

101. Denies each and every allegation contained in paragraph 101 of the plaintiff's Complaint.

102. Denies each and every allegation contained in paragraph 102 of the plaintiff's Complaint.

103. Denies each and every allegation contained in paragraph 103 of the plaintiff's Complaint.

104. Denies each and every allegation contained in paragraph 104 of the plaintiff's Complaint.

105. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 105 of the plaintiff's Complaint.

106. Admits that the City of Albany employed Police Officer Devin Anderson, and denies knowledge or information sufficient to form a belief as to the truth or falsity thereof for each and every other allegation contained in paragraph 106 of the plaintiff's Complaint.

107. Denies each and every allegation contained in paragraph 107 of the plaintiff's Complaint.

108. Denies each and every allegation contained in paragraph 108 of the plaintiff's Complaint.

109. Denies each and every allegation contained in paragraph 109 of the plaintiff's Complaint.

110. Denies each and every allegation contained in paragraph 110 of the plaintiff's Complaint.

111. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 111 of the plaintiff's Complaint.

112. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 112 of the plaintiff's Complaint.

113. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 113 of the plaintiff's Complaint.

114. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 114 of the plaintiff's Complaint.

115. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 115 of the plaintiff's Complaint.

116. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 116 of the plaintiff's Complaint.

117. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 117 of the plaintiff's Complaint.

118. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 118 of the plaintiff's Complaint.

119. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 119 of the plaintiff's Complaint.

120. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 120 of the plaintiff's Complaint.

121. Denies each and every allegation contained in paragraph 121 of the plaintiff's Complaint.

122. Denies each and every allegation contained in paragraph 122 of the plaintiff's Complaint.

123. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 123 of the plaintiff's Complaint.

124. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 124 of the plaintiff's Complaint.

125. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 125 of the plaintiff's Complaint.

126. Denies each and every allegation contained in paragraph 126 of the plaintiff's Complaint.

127. Denies each and every allegation contained in paragraph 127 of the plaintiff's Complaint.

128. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 128 of the plaintiff's Complaint.

129. Denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in paragraph 129 of the plaintiff's Complaint.

130. Denies each and every allegation contained in paragraph 130 of the plaintiff's Complaint.

131. Denies each and every allegation contained in paragraph 131 of the plaintiff's Complaint.

132. Denies each and every allegation contained in paragraph 132 of the plaintiff's Complaint.

133. Repeats and realleges each and every admission, denial, denial of knowledge or information sufficient to form a belief as to the truth or falsity thereof, and question or matter of law for the Court for each and every allegation referred to in paragraph 133 of the plaintiff's Complaint.

134. Denies each and every allegation contained in paragraph 134 of the plaintiff's Complaint.

135. Denies each and every allegation contained in paragraph 135 of the plaintiff's Complaint.

136. Denies each and every allegation contained in paragraph 136 of the plaintiff's Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

137. The actions set forth in the Complaint are barred by the applicable statute of limitations.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

138. The plaintiff has failed to comply with the applicable provisions of the New York State General Municipal Law.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

139. The plaintiff has failed to state a cause of action upon which relief can be granted.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

140. The plaintiff has failed to obtain personal jurisdiction over the answering defendants.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

141. That whatever injuries or damages the plaintiff may have sustained at the time(s) and place(s) alleged in the Complaint were caused in whole or in part by the plaintiff without any negligence, fault or want of care on the part of the answering defendants.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

142. That whatever injuries or damages the plaintiff may have sustained at the time(s) and place(s) alleged in the Complaint were contributed to by the culpable conduct and want of care on the part of the plaintiff and without any negligence, fault, or want of care on the part of the answering defendants.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

143. That whatever injuries or damages the plaintiff may have sustained at the time(s) and place(s) alleged in the Complaint were sustained by reason of plaintiff's own intentional and wrongful conduct.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

144. That the plaintiff acted illegally and must be held responsible for his own conduct.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

145. That whatever injuries or damages may have been sustained by plaintiff, as alleged in the Complaint, were caused, in whole or in part, by the negligent act(s) and/or omission(s) of third parties over which the answering defendants have no control.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

146. That plaintiff's damages should be reduced to the extent that plaintiff failed to mitigate those damages alleged in the Complaint.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

147. That answering defendants' liability to plaintiff for non-economic damages, if any, is limited pursuant to Article 16 of New York Civil Practice Law and Rules.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

148. That, upon information and belief, plaintiff's economic loss, if any, as specified in Section 4545 of the New York Civil Practice Law and Rules was replaced or indemnified in whole or in part from collateral sources and answering defendants are entitled to have the Court consider the same in determining such special damages, as provided in Section 4545 of the New York Civil Practice Law and Rules.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

149. That any and all acts of the answering defendants were performed in good faith and without malice.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

150. That there was no malice, intent or design on the part of the answering defendants to injure plaintiff.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

151. That the conduct of the answering defendants does not shock the conscience of the Court.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

152. That any actions on the part of the answering defendants were justified.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

153. That any negligence alleged on the part of the answering defendants was not a proximate cause of the injuries/damages alleged herein.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

154. That the answering defendants are unaware of any policy or custom designed to deprive citizens of their constitutional rights.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

155. That the answering defendants did not act in accordance with a policy or custom designed to deprive citizens of their constitutional rights.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

156. That the answering defendants are entitled to a qualified immunity defense.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

157. That the answering defendants acted in accordance with lawful procedure and were justified in all of their actions at the aforesaid time(s) and place(s).

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

158. That the arrest and detention of the plaintiff, were effectuated, if they were effectuated at all, in good faith, without malice and with good and legal justification, based on reasonable and probable cause.

AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

159. Only that amount of force reasonable and necessary under the circumstances, if any, was used by the answering defendants.

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

160. That it was not clear at the time of the official acts herein alleged, that an interest asserted by plaintiff was protected by a Federal Statute or the Constitution of the United States.

AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

161. That it was not clear at the time of the official acts herein alleged, that an interest asserted by plaintiff was protected by a New York State Statute or the New York State Constitution.

AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

162. That it was objectively reasonable, in light of clearly established law, for the answering defendants to believe that their acts did not violate plaintiff's constitutional rights.

AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE

163. That answering defendant, Devin Anderson, in his official capacity as a Police Officer within the Albany Police Department cannot be held liable for punitive damages.

AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

164. At all times relevant to the acts alleged in the complaint, the duties and functions of the municipal defendants' officials were entailed the reasonable exercise of proper and lawful discretion. Therefore, the answering defendants have governmental immunity from liability.

AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE

165. That the plaintiff's claims are barred by the doctrines of collateral estoppel and *res judicata*.

AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE

166. That the plaintiff may not recover punitive damages against a municipality.

AS AND FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE

167. Whatever injuries or damages were sustained by the plaintiff at the time and place alleged in the Complaint were the result of the contributory negligence of the plaintiff in being otherwise careless and negligent and by his assumption of the risk, and without any negligence or carelessness on the part of the answering defendants contributing thereto.

AS AND FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE

168. The answering defendants contend that they cannot fully anticipate all affirmative defenses that may be applicable to this action based on the conclusory terms used in Plaintiff's complaint. Accordingly, the answering defendants expressly reserve the right to assert additional affirmative defenses if and to the extent that such affirmative defenses become applicable.

DEMAND FOR JURY TRIAL

169. Answering defendants hereby demand a trial by jury in the instant action.

**AS AND FOR A CROSS-CLAIM AGAINST DEFENDANTS, COUNTY OF ALBANY;
HON. CRAIG D. APPLE, Albany County Sheriff; JOHN/JANE DOE 2 and 3;
CORRECTIONAL MEDICAL CARE, INC., and JOHN/JANE DOE 4 and 5**

170. If answering defendants were responsible, culpable and negligent as alleged in the complaint, their responsibility, culpability and negligence was passive to, secondary to, derivative to, partial to and lesser than the active, primary, direct, partial and greater responsibility, culpability and negligence of defendants, County of Albany; Hon. Craig D. Apple, Albany County Sheriff; John/Jane Doe 2 and 3; Correctional Medical Care, Inc., and John/Jane Doe 4 and 5.

171. If plaintiff recovers judgment in any amount from answering defendants, then answering defendants are entitled to full or partial indemnification and/or contribution over and against defendants County of Albany; Hon. Craig D. Apple, Albany County Sheriff; John/Jane Doe 2 and 3; Correctional Medical Care, Inc., and John/Jane Doe 4 and 5, jointly or severally.

172. Any damages sustained by the plaintiff were caused in whole or in part by the acts or omissions of defendants County of Albany; Hon. Craig D. Apple, Albany County Sheriff; John/Jane Doe 2 and 3; Correctional Medical Care, Inc., and John/Jane Doe 4 and 5, who are or may be liable to the answering defendants answering hereby for contribution on the basis of their equitable shares of responsibility, jointly or severally.

WHEREFORE, the answering defendants demand judgment dismissing the Complaint herein in its entirety, together with costs and disbursements of defending this action, including attorney's fees, together with such other and further relief as the Court deems just and proper.

Dated: December 17, 2013
Albany, New York

JOHN J. REILLY
Corporation Counsel for the City of Albany

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